IN THE SUPREME COURT OF TEXAS

NO. 96-0079

THOS D. MURPHY, JR., RAY HAWKINS, TRUDI HESTAND, AND TRACY HAWKINS, INDIVIDUALLY AND ON BEHALF OF COLONIAL FOOD STORES, INC. AND HAWKINS-ROCHESTER-MURPHY, INC. AND THE BANKRUPTCY ESTATE OF LOUIS ROCHESTER, INTERVENOR, PETITIONERS

v.

ROBERT CAMPBELL, RORY MCLAUGHLIN, JOE FLECKINGER & CHUCK SCHMIDT, INDIVIDUALLY AND D/B/A AGENTS FOR DELOITTE & TOUCHE, A PARTNERSHIP, FORMERLY KNOWN AS TOUCHE ROSS & CO., A PARTNERSHIP, AND AS AGENTS FOR TOUCHE ROSS & CO., AND TOUCHE ROSS & CO., RESPONDENTS

ON APPLICATION FOR WRIT OF ERROR TO THE
COURT OF APPEALS FOR THE THIRD DISTRICT OF TEXAS

Argued on September 5, 1996

JUSTICE ABBOTT, dissenting.

Why would a client want to file a malpractice lawsuit against his accountant when the client may ultimately prevail in his dispute with the Internal Revenue Service, thus making a malpractice action unnecessary? Because the Court today requires such a result. According to the Court, taxpayers who may ultimately succeed in overturning a tax deficiency must nevertheless sue their accountants after receiving the deficiency to preclude the expiration of limitations.

I believe this fosters unnecessary litigation. There is no need for an accountant to be subject to a malpractice claim if the Tax Court concludes that his client does not owe additional taxes and the accountant's advice was sound. While the Court states that taxpayers can file a malpractice action and then abate the action until the tax suit is resolved, such a hurry-up-and-wait approach is contrary to our efforts to expedite the litigation process.

For these reasons, and for the reasons set forth by Justice Spector, I dissent.

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GREG ABBOTT
JUSTICE

OPINION DELIVERED: December 11, 1997